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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,996	03/01/2005	Dietmar Schmidbleicher	26523U	1357
20529	7590	03/04/2009	EXAMINER	
THE NATH LAW GROUP 112 South West Street Alexandria, VA 22314			DEMILLE, DANTON D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,996	<b>Applicant(s)</b> SCHMIDTBLEICHER ET AL.
	<b>Examiner</b> Danton DeMille	<b>Art Unit</b> 3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 November 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12,14,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12,14,16 and 17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fastening devices and mounting as recited in claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: in paragraph 49 of the publication, it is not clear what is meant by “various ellipsoidal motions of [the forked

motions of][sic<sup>1</sup>] the forked mountings 7..." and the footnote at the end of this paragraph

<sup>1</sup>"Translator's note: bracketed text is superfluous in source document".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

**Claims 1-12, 14, 16, 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

The claims now recite "two frame- or table-like supporting plates". It is not clear what is meant by two frame-like supporting plates. Frames are usually composed of a plurality of members connected together to form a structure. It is not clear how a frame is a supporting plate. Plates are flat planer members that support something on their flat planar surface. The written specification does not refer to element 8 as a frame. Applicant appears to be claiming something that is outside of the scope of the invention as disclosed because the claims are describing element 8 as something other than what is disclosed. It is not clear what additional structures applicant is attempting to comprehend other than the supporting plate that is disclosed. In fact the claims later refer to a frame. So there is confusion between the frame-like supporting plates and the later claimed frame.

In claim 1, line 4, there is no clear antecedent basis for "the other supporting plate".

Which is the first supporting plate?

Regarding claim 14, fastening devices are set forth for the detachable connection of a mounting for securing solid bodies such that the mounting includes a shoe 51. This would appear to describe two different elements i.e., fastening devices and a mounting, that is in

between the cover plates and the shoe 51. Neither one of these elements are shown in the drawings. It is not clear what would comprehend these newly claimed elements.

Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There doesn't appear to be support in the original specification for the newly claimed fastening devices and mounting as recited in claim 14.

*Claim Rejections - 35 USC § 102*

**Claims 1, 14, 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kost.**

Kost teaches, for example, a device with two frame-like supporting plates 37, 38. Each supporting plate is mounted separately and independent of one another so as to be movable in three dimensions. A motorized drive 74, 69 is provided which sets the supporting plates in oscillating motion. Kost teaches in column 2, page 2, lines 61-65, that angular adjustment of the eccentric 51 relative to the worm wheel will vary the time sequence, in the cycle, between the vertical tilting movements and the horizontal twisting movements. This would adjust the timing sequence of the movements of each supporting plate. Therefore the movement of each supporting plate would be independent relative to the other by independently adjusting one supporting plate different from the other. The motorized drive is producing a random motion as perceived by the user because the vertical tilting movements and the horizontal twisting movements of each support plate is different from each other or asynchronous. Moreover, since

the Kost device can be adjusted in an infinite number of positions in which each support plate can move out of sync with each other, this would appear to broadly comprehend the claimed function of the motorized drive producing randomized motion.

Regarding the limitation of the supporting plates moveable in three dimensions, to any extent Applicant's device is random so is the device of Kost. The support plates 37, 38 are mounted on an universal joint 25 and therefore allow the support plates to move in three dimensions.

Regarding claim 14, Kost teaches including a shoc 40, 41 to fixedly place limbs of humans.

Regarding claim 16, Kost teaches cover plates at the bottom of foot plate members 30, 41.

**Claims 1, 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gardner '652.**

Gardner teaches, for example, two frame-like supporting plates 10, 12 having each longitudinal and transverse extension by being circular. The frame-like plates 10, 12 are situated parallel to one another by being place one on top of the other. The frame-like plates 10, 12 are in a frame, fig. 1, and are in a fixed stationary place. The device also includes at least one motorized drive 24 which sets the frame-like plates 10, 12 in oscillating motion in at least one dimension. Gardner teaches "means may be provided to limit the number of turns which the body makes in each direction, before it must be turned in the opposite direction" column 2, lines 53-56. Therefore the frame-like plates 10, 12 oscillate back and forth in opposite directions. The frame-like plates 10, 12 are mounted separately and independent of one another so as to be

moveable in three dimensions because as they rotate the top surface of each frame-like plate 10, 12 moves in three dimensions. The top surface rotates in two dimensions and also goes up and down in a third dimension. The oscillating motion also provides a randomized motion by "enabling relative rotation between the two body parts [10, 12], and so introducing a random feature to the action of the apparatus" Column 3, lines 4-5. As broadly recited it would appear Gardner anticipates the claimed invention.

Regarding claim 16, Gardner teaches cover plates 18, 16 connected to the frame-like plates 10, 12.

*Claim Rejections - 35 USC § 103*

**Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner '652 in view of McWhirter '484.**

McWhirter teaches a strap 18 to help retain the user on the supporting plates. There is no unobviousness to the exact shape or form of the straps. The straps could take the form of a shoe to better support the user on the supporting plates. It would have been obvious to one of ordinary skill in the art to modify Gardner to include a strap as taught by McWhirter to help secure the user on the supporting plates and to shape the strap as a shoe to better support the user on the supporting plates.

Claims 2-12, 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 14, 16 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that Kost does not disclose a random motion but rather a controlled motion. The examiner respectfully disagrees. Since the motion can be adjusted in an infinite number of settings the end result is that the motion would be random over a variety of different settings. Therefore overall, the device can produce a random motion by adjusting the oscillating motion from one adjustment to the next because the next infinite adjustment would be random from the previous adjustment. If the device is adjusted a plurality of times during one exercise treatment the end result would produce randomized motions.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4 March 2009

*/Danton DeMille/*  
Danton DeMille  
Primary Examiner  
Art Unit 3771